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In the Supreme Court of the United States

OCTOBER TERM, 1944.

FLORA COYNE, *et al.*,
Petitioners,
vs.
SIMRALL CORPORATION, *et al.*,
Respondents.

No. 230.

ANSWER TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT, WITH SUPPORTING BRIEF.

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SUBJECT INDEX.

TABLE OF CASES CITED.

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May it Please the Court:

The Answer of Simrall Corporation, the Respondent herein, to the Petition of Flora Coyne, *et al.*, for a Writ of Certiorari, respectfully presents to this Honorable Court:

I.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

Petitioners' statement of the case is largely correct. However, some correction of inaccuracies and supplying of additional information is essential to a complete presentation. Petitioners' statements on page 5 might mislead this Court into the conclusion that some of the parties had knowledge of the lease clause at the time of their mineral purchases. The statement stems from a badly garbled transcript of testimony, a product of incompetent reporting. The only completely reliable reference is the very complete finding of fact by the Trial Court in its opinion (R. 205-219) which was competently reported and the concurring condensation of same in the unanimous opinion of

the Appellate Court (R. 485-494). However, Petitioners admit complete ignorance on the part of all parties in the following paragraph.

Petitioners' statement on page 6 that Simrall Corporation discovered in November, 1939, that it had made a mistake is incorrect. About October 8, 1939, Simrall Corporation discovered the apportionment clause (R. 326) and it was from it that all other parties, including Flora Coyne and her counsel, received their information (R. 216).

Contrary to Petitioners' statement on page 7 concerning the deletion agreement, same was drafted to carry out the admitted intent of all parties. It was executed and delivered by a large number of parties, including the operators of the lease. Flora Coyne and at least one of her children likewise executed (R. 328, 356) but denied that they made delivery. The contract never became fully operative because it was never completely executed, but cognizance must be taken of it as showing the desire of the lease operators, for whose benefit the clause was inserted in the lease, to render such clause non-operative.

The basic difference between the claim of Petitioners and the claim of Respondents develops from a varying conclusion of fact—not from a conflict of law.

Petitioners say that because the mineral deeds recited that they were subject to the lease, and also because the lease was of record, the clause must be deemed to be incorporated in the deeds; that the intent was to make the deeds so subject to all of the terms of the lease regardless of what those terms were.

Respondents claim that while they knew there was a lease, they believed it was the regular Michigan form with which they were all familiar; that all were in total ignorance that there was a different form of lease such as the present one in existence; that all mutually assumed they knew the terms since they knew no other; that they contracted on this mutual assumption.

If the actual admitted intent of all parties constitutes the substance of the meeting of the minds, one contract results; if the intent formally expressed in the deeds controls, a different contract results. We are thus dealing with two conflicting claims as to the true contract. The Trial and Appellate Courts preferred admitted substance to artificial form and granted reformation of the form to comply with the substance.

This Respondent was the interpleading plaintiff in the Trial Court. Because of the security afforded by the impounded funds and its impregnable position on estoppel (which the Appellate Court did not have to consider in arriving at its decision), the two Courts were correct in their conclusion that this Respondent is interested only in determining the proper recipients of the royalty funds. This position gives rise to the question as to why we should object to the granting of the Petition. In this regard, we desire to point out that by order of the Trial Court, this Respondent is not released until final disposition, and it has an interest in preventing a further prolonging of this vexatious litigation with its attendant expenses. It likewise conceives it its duty to the Courts to aid in preventing a miscarriage of justice.

II.

REASONS RELIED UPON FOR DENIAL OF THE WRIT.

Respondent's position, briefly summarized, is as follows:

Petitioners are stressing three reasons for the allowance of the Writ.

Reason one, a statement of law, is applicable and has merit only if we totally disregard the finding of fact by the Trial Court and the concurrence therein by the Appellate Court. The statement of law and authorities in support thereof apply with equal force to Respondent's contentions, it being solely a question of what the true contract was between the parties.

As to reason two, Petitioners are laying undue stress upon a statement of law that in our opinion is not involved in this case. The Court made a bare recital of this proposition in conjunction with a number of other citations applicable to somewhat similar situations. The statement that the decision of the Appellate Court is predicated on the recited legal proposition is fallacious. A study of the decision will not support Petitioners' contention.

The claim that the present decision is of general importance is not tenable. The decision by its factual basis is a precedent of value only in isolated situations.

It is the settled law of this Court to accept as correct findings of fact in which the District Court and the Court of Appeals have concurred, but Petitioners for the third time are urging the finding of fact and the drawing of conclusions therefrom contrary to the admitted intent of all parties.

In further answer to Petitioners' position, we call the Court's attention to the fact that the Petition has not met in the slightest degree the requirements of Rule 38 of the United States Supreme Court Rules, and especially Section 5 thereof.

WHEREFORE RESPONDENT RESPECTFULLY PRAYS that this Honorable Court deny Petitioners' application for Writ of Certiorari. And your Respondent will ever pray.

BRIEF DENYING RIGHT TO PETITION FOR WRIT OF CERTIORARI.

I.

The Opinion in the United States District Court for the Eastern District of Michigan, Northern Division, may be found in the Record on page 205.

The Opinion in the United States Court of Appeals for the Sixth Circuit is reported in 140 Fed. 2nd, page 574, and also may be found in the Record on page 486.

II.

JURISDICTION.

The Petition does not comply with the provisions of Rule 38 of the United States Supreme Court Rules, and especially Section 5 thereof, and likewise Rule 12, which relates to jurisdiction, has not been satisfied by the Petitioners.

III.

STATEMENT OF THE CASE.

In view of the inaccuracies and omissions in the Petition, Respondent has prepared a statement correcting such inaccuracies and added such omitted facts as were necessary. These have been heretofore set forth in the Respondent's Summary Statement (Answer to Petition, p. 1).

IV.

ARGUMENT.

Summary of Argument.

Point A.

The decision of the United States Circuit Court of Appeals for the Sixth Circuit does not do violence to any universal and fundamental rules of law.

Point B.

Petitioners' second proposition of law is unimportant to a determination of the issues herein involved.

Point C.

The decision of the Appellate Court is not of general importance.

Point D.

The granting of the Petition could only be done by ignoring the rules of this Court and by a reversal of policy in regard to reviewing questions of fact.

POINT A.

It must be borne in mind that this is purely a dispute between a group over the division of a sum of money derived from the sale of royalty oil. The lessee is not involved; the validity of the lease clause is not in issue. Petitioners' argument and citation of authority would have some weight if they owned the lease and were defending a lessee insisting upon strict conformity with the lease clause. But the owner of the lease is satisfied. It continues to receive the only thing that it is really interested in—the proceeds from 7/8 of the production. It has no interest in the remaining 1/8 royalty interest. Both Court opinions point this out. With this in mind, it is apparent that the clause was inserted for the convenience of the lessee in making payment. No other conclusion is possible from a reading of the lease. The only evidence in the case, produced by Petitioners' own expert witnesses, substantiates this finding. (R. 371, 379.) Had the lessee insisted upon disbursal of the royalty on a pro rata basis, there is nothing in either opinion denying it this right. That the lease operators do not care to so insist is best evidenced by their execution and delivery of the agreement taking from them the right to control payment.

It cannot then be said that Flora Coyne's acts were unlawful or ineffectual. We have no argument with the Petitioners' citation of the authority but submit that it has no proper application to this case. Other litigation involving this lease provision is carefully differentiated in the Appellate Court's opinion, particularly *Harley v. Magnolia Petroleum Company, et al.*, 378 Ill. 19, an authority heavily relied upon by both sides in the Appellate Court.

Petitioners' statement of the law under POINT A is well put and amply supported by their brief. Insofar as the statement confines itself to citation of authority, it fully supports Respondent's contentions, but Petitioners' arguments reflect a grave misconception of the foundation of this case.

The Court has not made an agreement for the parties which they never agreed upon. To the contrary, it merely enforced the only agreement upon which their minds actually met. This meeting of the minds was the true agreement. As the Appellate Court said, "the evidence clearly disclosed that they mutually intended and contracted on the common understanding that royalties would be paid only to the owners of interests in the parcels from which oil was produced." (R. 492.)

This was the substance of the understanding. They erred in carrying it out because all presumed (never having heard of any other type of lease) that the usual Michigan form of lease was involved, with the result that the instruments used did not reflect the true understanding. Petitioners are for the third time continuing their error in confusing form and substance; they are urging that the lease clause must be considered written into the deeds because the deeds refer to the lease, and even if they did not, the lease was of record first. The result of this contention is a different contract than the parties intended. It is a different contract than the Court is talking about. There

is no controversy concerning the law of contracts or the power of a court to reform, but only as to what the contract was in fact. In determining the true agreement based upon a mutual intent, the Court made a finding of fact which is conclusive.

The Petitioners have competently outlined the law applicable to this situation. We see no necessity of adding thereto and in the interest of brevity, adopt Petitioners' citation of authority as our own.

POINT B.

This Respondent agrees that the cited proposition does not apply directly to the case involved but submits that the Petitioners are frantically grasping for a straw in asserting that the Appellate Court's decision is predicated on this proposition. As Petitioners well know, the gist of this case is set forth as follows (R. p. 491):

> "In discussing the legal principles applicable to the cited case, it was said that reformation would be granted on the ground of mutual mistake where the mistake was one of fact, and where the proof clearly and convincingly shows that a mistake was made and that it was mutual and common to both parties."

POINT C.

It is significant that Petitioners urge equities in favor of unknown purchasers of mineral interests and of the owners of the present lease, none of whom are involved here. The reason is obvious—Petitioners have no equities of their own to present. Their situation is so contrary to equity and good conscience that they would prefer to overlook this phase and have others forget it likewise. They attempt to becloud and confuse the issue by talking of chaotic conditions that they claim will result from the present decision. For a court to sanction their attitude is to violate every fundamental conception of justice. As the Trial Judge so aptly put it (R. 214, 215):

"In this case, take the sixty people and try to work out a result by which nobody would be getting what they expected—not one; some getting more, some getting less, nobody getting the results that they anticipated. That is one of the things that make people suspicious of their laws, their Courts, when they reach such a decision. Shouldn't do it."

Petitioners state that now buyers and sellers will not know their rights if they purchase minerals in premises subject to this type of lease. This decision will not affect this situation since if such parties purchase with this knowledge, the doctrine of this case is not applicable. The case is predicated upon a factual status of total ignorance by all parties, not only as to the terms of the particular lease, but also that such a lease form is even in existence. The facts came into being approximately six years ago. It is unlikely that an identical situation can again occur. As Petitioners point out, many modern forms contain such a lease clause. With increased use, knowledge of it becomes widespread and the possibility of future controversies is reduced to the vanishing point. This very case, by virtue of the fact that a considerable number of parties are involved and the publicity received by it in its progress through successive courts, would certainly be an educational factor in acquainting those persons who engage in royalty buying and selling with this type of problem.

Petitioners stress that the rights of royalty purchasers are more or less at the mercy of the lessee. There is truth in this statement but it does not grow out of the present opinion. The fault lies not in this decision but in the use of the clause and the infrequent occurrence of a sale of royalties under a description less than that contained in the lease. The lessee can effectively alter the rights by merely discharging the unproductive portion of the lease, a right that no one disputes that it has. In the exercise or non-exercise of this power lies the real difficulty in determining the future rights of royalty owners.

It is the considered opinion of this Respondent, one of the largest Michigan purchasers of crude oil, that the decision of the Appellate Court is not of general importance, that it grew out of an isolated situation, and except in exceedingly unusual circumstances, it is a precedent of no value. It is of real importance only to the Petitioners, the balance of the Respondents and their respective counsel.

POINT D.

The Petition does not come within the purview of Rule 38, and particularly Section 5 thereof. The record is barren of any claim that a Federal question of any kind is involved; the decision is not in conflict with any decision of any other Circuit Court of Appeals on the same matter; Petitioners admit (page 28) that there is no local law in conflict because the Michigan Supreme Court has not passed on the matter; there has been no departure from the accepted and usual course of proceeding.

Moreover, this Court does not grant Certiorari for the purpose of reviewing evidence and discussing specific facts. Unless clear error is shown, this Court will accept as correct findings of fact in which the District Court and the Court of Appeals have concurred (*Coryell v. Phipps,* 1943, 317 U. S. 406).

Examination of the Specification of Errors shows clearly the confusion of Petitioners. All, with the exception of the sixth, involve either a finding of fact, a conclusion to be drawn from the facts, or a mixed question of law and fact. As to the sixth Specification of Error, it should be noted that the Petitioners are not the lessee and do not represent the lessee. No rights of the lessee could conceivably be affected by the opinion since the lessee was not a party to the action.

CONCLUSION.

In view of the long established tradition of this Court and embodied in its rules that a review on Writ of Certiorari is not a matter of right but of sound judicial discretion and will be granted only where there are special and important reasons therefor, Respondent respectfully submits that the Petition is without merit for the reasons aforesaid and does not establish the proper basis for exercise of this Court's discretion.

Respectfully submitted,

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